appellants are faced in this appeal with the task of persuading this Court to reach different findings of fact, notwithstanding that those findings are based upon the credibility of witnesses who gave evidence in the Court below. This would be a heavy task in any circumstances but it is doubly so in a case such as this, involving a deep and bitter family dispute, where the imponderable elements, or as Lord Goddard has called it, the atmosphere of the case, is so important and can only be fully appreciated by the Judge who presided over the trial and had the opportunity of seeing and hearing the witnesses and observing their bearing when they gave evidence. Before leaving this part of the case, therefore, I think it desirable to record that if it were necessary for me to make findings of fact for the purposes of this judgment, I would concur in those which the learned trial Judge made in the Court below.

[His Lordship then dealt with an allegation that the petrol filling station had been given by the respondent to the two grandsons and found that there had in fact been no such gift.]

Wee Chong Jin and **Ambrose JJ.** concurred.

Appeal dismissed.

Solicitors: *Marshall & Co.; Drew & Napier.*

MUTHUKARUPPAN v. THE TOWN COUNCIL, TAIPING

[A.Cr.J. (Good J.) June 10, 1958]

[Ipoh — Criminal Revision No. 8 of 1958]

Local Authority — Nuisance order — "Hearing the complaint" under s.80(i)(a) of the Town Boards Enactment (F.M.S. Cap. 137) — Procedure.

Where a person is summoned to appear before a Magistrate under section 80 of the Town Boards Enactment and the Magistrate purports to act under section 80(i)(a), "hearing the complaint" does not mean merely reading what the Chairman has stated in his complaint; it must mean hearing the evidence of the matter complained of and giving the person against whom the complaint is made an opportunity of adducing evidence in rebuttal. In other words, the Magistrate should hear both sides of the case in accordance with the ordinary procedure of the Courts.

In this case there was no evidence on the record to show that a notice to abate a nuisance had been served upon the applicant and that he had made default in complying with it, and therefore the provisions of section 80 had not been complied with.

Held: (1) this omission, going as it did not merely to a matter of procedure but to the fundamental question whether justice had been seen to be done, amounted to an illegality and not merely an irregularity curable under section 422 of the Criminal Procedure Code (F.M.S. Cap. 6);

(2) the nuisance order should be set aside and the case should be remitted for re-hearing the complaint in accordance with normal judicial procedure.

CRIMINAL REVISION.

P. P. Dharmananda for the applicant.

F. C. Cooke (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Good J.: This is an application made to me on the 3rd April, 1958, for the revision of an order made by the Magistrate, Taiping, on the 6th July, 1957, requiring the applicant —

"1. To cease keeping cattle on lot No. 1946, Kampong Boyan, Taiping;

2. To demolish the cattle shed belonging to you on the abovenamed lot;

3. To keep the said lot in a clean and sanitary condition after demolition of cattle shed."

The applicant had a right of appeal under section 88 of the Town Boards Enactment which he did not choose to exercise, and I would be most reluctant to use my revisionary powers in such a case unless I was satisfied that there had been a miscarriage of justice. The principle "*fiat justitia*" however includes the principle that justice must not only be done but must manifestly and undoubtedly be seen to be done, and I am not satisfied that this can be said of the present case.

The applicant was summoned to appear before the Magistrate by a summons in Form G in the Schedule to the Town Boards Enactment issued under section 80, and the Magistrate purported to act under section 80(i)(a). In order that the Magistrate should be invested with the jurisdiction to make a nuisance order under that sub-section four conditions would have to be fulfilled —

(i) a notice must have been served on the person concerned to abate a nuisance;

(ii) he must have made default in complying with one or more of the requisitions of the notice within the time specified therein;

(iii) there must have been a complaint by the Chairman; and

(iv) the Magistrate must have heard the complaint.

What happened in fact was that a complaint was made by the Chairman but the Magistrate took no evidence at all and, in effect, he made an *ex parte* order. "Hearing the complaint" cannot mean merely reading what the Chairman has stated in his complaint; it must mean hearing evidence of the matters complained of and giving the person against whom the complaint

is made an opportunity of adducing evidence in rebuttal; in other words, the Magistrate should have heard both sides of the case in accordance with the ordinary procedure of the Courts. There is no evidence on the record to show how the Magistrate could have been satisfied —

(a) that a notice to abate a nuisance had been served upon the applicant; and

(b) that the applicant had made default in complying with it.

The provisions of section 80 were not complied with and this omission, going as it does not merely to a matter of procedure but to the fundamental question whether justice has been seen to be done, in my view amounts to an illegality and is not merely an irregularity curable under section 422 Criminal Procedure Code (if, indeed, that section applies at all, which is, to say the least, doubtful). The interests of justice demand a proper hearing, and I therefore set aside the nuisance order made by the Magistrate on the 6th July, 1957, and remit the case to the Magistrate's Court with directions that he hear the complaint in accordance with normal judicial procedure.

Order accordingly.

Solicitors: *Chabra & Dharmananda.*

N. RAMACHANDRAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Smith J.) June 12, 1958]

[K.L. — Criminal Appeal No. 21 of 1958]

Road Traffic — Traffic sign — "No Parking" — Waiting at "No Parking".

The appellant in this case had arranged by telephone to pick up his friend in his motor car and driven to Batu Road where he stopped his car by a "No Parking" sign and requested a watchman to go indoors and inform his friend that he was there, whilst he remained in the driver's seat waiting for his friend. A policeman told the appellant to drive on, but he did not do so, saying that he wanted to wait for his friend. He was charged and convicted for the offence of failing to conform to the indication given by a traffic sign, to wit "NO PARKING" under the Motor Vehicles Traffic Signs Regulation, reg. 33(b).

Held: waiting before a house in a public street while the driver of the car remained at the wheel did not constitute "parking".

A distinction could be drawn between "waiting" and "parking" in a public street. If a person remained in his stationary car in Batu Road he would be "waiting" there, but if he went out and got into a shop leaving his car there he would be "parking" his car. A parked car is always a waiting car, but a waiting car in a public street is a parked car only when the driver is absent from the vehicle.

Case referred to:—

(1) *Ashby v. Tolhurst* (1937) 2 K.B. 242.

MAGISTRATE'S CRIMINAL APPEAL.

Lall Singh Muker for the appellant.

Mohamed Salleh bin Abas (Federal Counsel) for the respondent.

Smith J.: The appellant was convicted of the following offence:—

"That you on 8th August, 1957 at about 4.20 p.m. at Batu Road, Kuala Lumpur being the driver of Motor Vehicle No. N9551 did fail to conform to the indication given by a traffic sign, to wit "NO PARKING" and that you have thereby committed an offence under Reg. 33(b) of the Motor Vehicles Traffic Signs Regs. and punishable under Reg. 8(1) of the Road Transport Proclamation No. 17."

The facts are simple. The appellant had telephoned a friend who lived in Batu Road to the effect that he would pick the friend up in his motor-car. The appellant drove to Batu Road and stopped by a "No Parking" sign and requested a watchman to go indoors and inform his friend that he was there. The appellant remained in the driver's seat waiting for his friend. A police officer told the appellant to drive on. The appellant did not do so saying that he wanted to wait for his friend. He waited there for about eight minutes and when the friend came he drove away.

The question which the Court is called upon to decide is whether waiting before a house in a public street for eight minutes while the driver of the car remains at the wheel constitutes "parking".

"Parking" is not defined under the Road Transport Proclamation. In the examples of traffic signs given in Part I to the schedule of the Motor Vehicles Traffic Signs Regulations, 1946, there appears a sign "No Waiting This Side On Even Dates". There is no statutory example of a sign with "No Parking" upon it. It appears to me that it is perfectly clear that an offence would have been committed if the notice had read "No Waiting." What is to be decided is whether the terms "parking" and "waiting" are synonymous.

The only case in which an attempt has been made to define the word "parking" judicially is that of *Ashby v. Tolhurst*,(1) in which the Court was considering the exact nature of a particular contract between the proprietor of a car park and a person whose car had been stolen from the car park. In his judgment Sir Wilfrid Greene, M.R. made the following remarks *obiter* at page 249:—